

REMARKS

In the Office Action mailed September 26, 2006 the Examiner rejected claims 1 and 4 under 35 U.S.C. 112, second paragraph, as being indefinite and rejected claims 1-5 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0093154 to Simmonds et al.

In response, Applicant has amended claim 1 and cancelled claims 6-21. No new matter has been added. Applicant reserves the right to pursue claims 6-21 in one or more divisional applications.

The Examiner has objected to the word “portion,” in claim 1 and cited it as the basis for the indefiniteness rejection. Applicant submits that the word “portion,” has ordinary meaning in the art. One definition for the word portion is “a part of a whole.” Thus, recording 1 minute of radio broadcast signals is to record one portion of a radio broadcast that goes on 24 hours a day.

The Examiner has also objected to the phrase “primary band signal,” in claim 4. Again, this term has ordinary meaning in the art. As an example, the primary band signal for a radio broadcast is the portion that carries audible signals that are converted to sound waves the user can hear. Typically the primary band signal carries such data as that pertaining to music or talk involving news or weather.

Applicant has amended claim 1 to recite using voice recognition to extract the anomaly information. Simmonds et al. do not do this. Instead, Simmonds et al. send encoded messages that can be understood by the VCSI 30 in FIG. 2. See generally, paragraphs [0044] and [0058]. Nowhere in Simmonds et al. is voice recognition used to extract data from a radio broadcast message.

Simmonds et al. do describe using voice recognition to control the system in the car based on voice commands issued by the driver of the car and not from a radio broadcast signal as presently claimed. See paragraphs [0036], [0075] and [0088].

Applicant would like to point out that this difference is important. The system of Simmonds et al. requires that the car have a VCSI system that can understand and interpret the encoded signals it receives from the infogas transceiver port. See paragraph [0044]. Thus, Simmonds et al. require an infrastructure be built that can support signals being transmitted between the car transceiver 54 and the location transceiver 58 in FIG.

3. One goal of the present invention is to avoid building or maintaining an additional infrastructure. See paragraph [0006] and [0007]. Thus, claim 1 uses the existing infrastructure established for traditional radio broadcasts.

Applicant would also like to address the Examiner's comments regarding functional language in an apparatus claim. The Examiner asserts "[a]pparatus claims cover what a device is, not what a device does," as cited in Hewlett-Packard Co. v. Bausch & Lomb, Inc., 15 USPQ2d 1525, 1528.

Hewlett-Packard ("HP") sued Bausch & Lomb ("BL") for patent infringement. The patent covers plotters that move paper underneath a pen so graphs and charts can be drawn. BL asserted that the patent was obvious, and therefore invalid, in view of one piece of prior art. The HP patent used a wheel with grit on it to keep the paper from slipping as it is moved the paper. The BL prior art used a wheel with a knurled surface to move the paper.

BL apparently admitted that the knurled wheel of the prior art was a different structure than the gritted wheel of the HP patent. BL went on to argue that it would have

been obvious to one of ordinary skill in the art to replace the knurled wheel of the prior art with a gritted wheel because a gritted wheel would have the same operational performance (i.e., reduced amount of slippage) as a knurled wheel.

This argument by BL was incorrect and therefore rejected by the Court. BL attempted to reduce the structure claim of HP's patent to the function performed and thereby disregard the structural limitations of the claims (i.e., a gritted wheel). This is what the Court meant when it stated, "[a]pparatus claims cover what a device is [a gritted wheel], not what a device does [anything that reduces slippage]."

Applicant asserts that any functional language in a claim is a limitation in that claim that must be given weight and can distinguish that claim over the prior art. See generally Pac-Tec, Inc. v. Amerace Corp., 903 F.3d 769, 801 (Fed. Cir. 1990) ("functional language, in cases like the present, cannot be disregarded"). In claim 1, Applicant has claimed a tuner, a selection recognition engine and a global positional satellite device that are structures that are further defined by the functions they perform. See MIT v. Abacus Software, 462 F.3d 1344, 1356 (Fed. Cir. 2006) ("The claim language here too does not merely describe a circuit, it adds further structure by describing the operation of the circuit").

CONCLUSION

No fees are due for this Response beyond the fees for a Petition for a 1 Month Extension of Time. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant requests entry of this amendment, reconsideration of the pending claims and the issuance of a Notice of Allowance. Should the Examiner have any questions, he is invited to contact Applicant's representative below.

Respectfully submitted,

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